

CSD 1251 [05/10/00]

## UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re

North Plaza, LLC

Debtor.

Angela C. Sabella, Dynamic Finance Corporation  
(Appellants)

BANKRUPTCY NO. 04-769-PB11

v.  
Richard Kipperman (Appellee)BK APPEAL NO. 2  
ASSIGNED TO JUDGE Peter W. BowieNOTICE OF REFERRAL OF APPEAL TO BANKRUPTCY APPELLATE PANEL  
COMBINED WITH SERVICE OF NOTICE OF APPEAL

TO: Michael Gerard Fletcher, Esq., Frandzel Robins Bloom & Csato, L.C., 6500 Wilshire Blvd., Seventeenth Floor, Los Angeles, CA 90048-4920  
 Ali M. M. Mojdehi, Esq., Baker & McKenzie LLP, 12544 High Bluff Drive, Third Floor, San Diego, CA 92130-3051  
 United States Trustee, Dept. of Justice, 402 W. Broadway, Ste. 600, San Diego, CA 92101

NOTICE IS HEREBY GIVEN that a Notice of Appeal has been filed by Angela C. Sabella, Dynamic Finance Corporation with the Clerk of the Bankruptcy Court. By virtue of orders of the Judicial Council of the Ninth Circuit and the District Court for this district, the above appeal has been referred to the United States Bankruptcy Appellate Panel of the Ninth Circuit (BAP).

Any party desiring to object to such referral must do so in conformity with the foregoing orders and their provisions for reference to the BAP, a copy thereof being hereto attached.

For further information, you may contact the Clerk of the United States Bankruptcy Appellate Panel at 125 S. Grand Avenue, Pasadena, California 91105 or by calling (626) 229-7225.

I hereby certify that on this date copies of the Notice of Appeal and the within Notice of Referral were mailed to the above-named person(s).

DATED: June 16, 2008

Barry K. Lander, Clerk

By: Kurt Herbold, Deputy Clerk  
 Kurt Herbold

CR  
| mem

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
325 West F Street, San Diego, California 92101-6991

(619) 557-5620

FAX: (619) 557-5536

RECEIVED  
Harold S. Manibus, Clerk  
U. S. BANKR. APP. PANEL  
OF THE NINTH CIRCUIT

## TRANSMITTAL MEMORANDUM

JUN 18 2008

To: BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT  
125 S. Grand Avenue  
Pasadena, California 91105

From: BARRY K. LANDER, Clerk District/Office No. 974-3

## CASE NAME

North Plaza, LLC

## BANKRUPTCY NO.

04-769-PB11

## ADVERSARY NO.

## APPEAL NO.

2

## BANKRUPTCY JUDGE

Peter W. Bowie

## DATE BANKRUPTCY FILED

1/28/04

DATE OF ENTRY  
OF APPEALED  
ORDER:

6/2/08

NOTICE OF  
APPEAL FILED  
ON:

6/9/08

## FEE PAID:

YES

NOTICE OF REFERRAL TO  
BAP MAILED ON:

June 16, 2008

DATED: June 16, 2008

Barry K. Lander, Clerk

By: Kurt Dergoed, Deputy Clerk  
Kurt Herbold

1 Ali M.M. Mojdehi, State Bar No. 123846  
 2 Janet D. Gertz, State Bar No. 231172  
**BAKER & MCKENZIE LLP**  
 3 12544 High Bluff Drive, Third Floor  
 San Diego, CA 92130-3051  
 Telephone: +1 858 523 6200  
 Facsimile: +1 858 259 8290

RECEIVED  
 Harold S. Maranus, Clerk  
 U. S. BKCY. APP. PANEL  
 OF THE NINTH CIRCUIT

JUN 26 2008

5 Counsel for Chapter 11 Trustee,  
 Richard M Kipperman

FILED \_\_\_\_\_  
 DOCKETED \_\_\_\_\_ DATE INITIAL

7  
 8 UNITED STATES BANKRUPTCY COURT  
 9 SOUTHERN DISTRICT OF CALIFORNIA

10  
 11 In re:

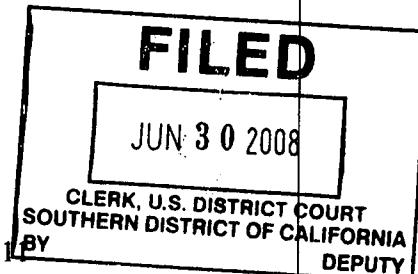
12 NORTH PLAZA, LLC,  
 a California Limited Liability Company,  
 13 Debtor

Case No.04-00769 PB11

Bankruptcy Appeal No. 2

Chapter 11

ELECTION TO HAVE MATTER  
 HEARD BY DISTRICT COURT



16  
 17 Richard M Kipperman, Chapter 11 Trustee, respectfully elects pursuant to 28 U.S.C.  
 18 §158(c)(1)(B) to have the appeal taken from the Order on Trustee's Motion to Compel Discovery  
 19 from Isaac Lei/The Alcon Group, dated May 30, 2008, heard by the United States District Court,  
 20 Southern District of California.

21  
 22 Dated: June 25, 2008

BAKER & MCKENZIE LLP

24 By: /s/ Ali M.M. Mojdehi

25 Ali M.M. Mojdehi

26 Janet D. Gertz

27 Counsel for Chapter 11 Trustee,  
 Richard M Kipperman

1 Michael Gerard Fletcher (State Bar No. 070849)  
2 mfletcher@frandzel.com  
3 Tricia L. Legittino (State Bar No. 254311)  
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6 6500 Wilshire Boulevard  
7 Seventeenth Floor  
8 Los Angeles, California 90048-4920  
9 Telephone: (323) 852-1000  
10 Facsimile: (323) 651-2577  
11  
12 Attorneys for Appellants Angela C. Sabella and  
13 Dynamic Finance Corporation

RECEIVED  
Harold S. Mananu, Clerk  
U. S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

JUN 18 2008

FILED \_\_\_\_\_  
DOCKETED \_\_\_\_\_  
DATE \_\_\_\_\_ INITIAL \_\_\_\_\_

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

10 In re

CASE NO. 04-00769-PB 11

11 NORTH PLAZA, LLC,

Chapter 11

12 Debtor.

**NOTICE OF APPEAL**

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1 WRITTEN DECISION - NOT FOR PUBLICATION

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ENTERED	6/2/08
FILED	
MAY 30 2008	
CLERK, U.S. BANKRUPTCY COURT	
SOUTHERN DISTRICT OF CALIFORNIA	
BY	JP
DEPUTY	

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

11 In re ) Case No. 04-00769-PB11  
12 NORTH PLAZA, LLC, ) ORDER ON TRUSTEE'S MOTION  
13 Debtor. ) TO COMPEL DISCOVERY FROM  
 ) ISAAC LEI/THE ALCON GROUP

14

15 Richard Kipperman, chapter 11 Trustee ("Trustee") of the  
16 estate of North Plaza, LLC ("Debtor") seeks discovery consisting  
17 in part of communications between Isaac Lei/The Alcon Group  
18 (collectively "Lei") and counsel for Dynamic Finance Corporation  
19 ("Dynamic") and Angela Sabella ("Sabella") (referred to at times  
20 collectively "Sabella"). Sabella objected to the discovery on  
21 the ground that Lei was serving as her "client representative"  
22 and hence the information was protected by the attorney-client  
23 privilege. The Trustee brought a motion to compel, which is  
24 before the Court.

25 The Court, having conducted an evidentiary hearing and  
26 reviewed the authorities cited by the parties, determines that

1                   NOTICE IS HEREBY GIVEN that appellants Angela C. Sabella ("Sabella") and Dynamic  
 2 Finance Corporation ("Dynamic") hereby appeal to the United States Bankruptcy Appellate Panel  
 3 of the Ninth Circuit under 28 U.S.C. § 158 from the Order of the United States Bankruptcy Court  
 4 for the Southern District of California dated May 30, 2008, and entered June 2, 2008, [Docket No.  
 5 772] whereby the Bankruptcy Court granted the Trustee's Motion to Compel Discovery from Isaac  
 6 Lei/The Alcon Group, a copy of which is attached hereto as Exhibit 1.

7                   NOTICE IS HEREBY FURTHER GIVEN that the names of the interested parties to this  
 8 appeal from the Order, and the names, addresses and telephone numbers of the parties and/or their  
 9 respective attorneys are set out in the attached certificate of service.

10

11

12

Respectfully submitted,

13

DATED: June 9, 2008

14

FRANDZEL ROBINS BLOOM & CSATO, L.C.  
 MICHAEL GERARD FLETCHER  
 TRICIA L. LEGITTINO

15

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17

By: /s/ Michael Gerard Fletcher  
 MICHAEL GERARD FLETCHER  
 Attorneys for Appellants Angela C. Sabella and  
 Dynamic Finance Corporation

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FRANDZEL ROBINS BLOOM & CSATO, L.C.  
 6500 WILSHIRE BOULEVARD, 17TH FLOOR  
 LOS ANGELES, CALIFORNIA 90048-4920  
 (323) 852-1000

1 Lei was not serving as "client representative" of Sabella for the  
2 purposes of the attorney-client privilege. The "client  
3 representative" extension of the attorney client-privilege does  
4 not extend so far as to cover Lei under the facts of this case.  
5 Accordingly, the Trustee's motion to compel is granted over the  
6 objection by Sabella on the ground of attorney-client privilege.

7

8

#### FACTS

9 Pursuant to Rule 2004 and this Court's Order dated September  
10 19, 2006, the Trustee served the subpoenas to Alcon Group Inc.,  
11 Custodian of Records of Alcon Group, Inc., and Isaac Lei on  
12 February 16, 2007. Under the subpoenas, Alcon and Lei were  
13 requested to appear and produce documents on March 2 and 5, 2007.  
14 On February 26, 2007, Lei served the Trustee with an Objection to  
15 the Subpoenas, which raised several objections including that  
16 Lei's communications with counsel for Sabella were protected by  
17 the attorney-client privilege because Lei was serving as "client  
18 representative" of Sabella.<sup>1</sup>

19 The Trustee filed a motion to compel responses from Lei.  
20 After substantial briefing and a lengthy evidentiary hearing, the  
21 Court took the matter under submission. For the reasons set  
22 forth below, the Court finds that Lei was not acting as a "client  
23 representative" of Sabella, and is thus not covered by her  
24 attorney-client privilege.

25

26 <sup>1</sup> Although the objection was filed by Lei, counsel for Lei explained that Lei would not be participating substantively in the matter – that it was "going to be a Dynamic Sabella show..." See Transcript dated January 29, 2008, at 18:4-5.

## DISCUSSION

2 "Parties may obtain discovery regarding any nonprivileged  
3 matter that is relevant to any party's claim or defense ...."  
4 Fed.R.Civ.P. 26(b)(1). Thus, a discovery request is  
5 objectionable under Rule 26(b)(1) if it requests information  
6 which is privileged.

7        In deciding whether a particular case presents facts which  
8 warrant the recognition and application of a privilege, certain  
9 principles apply. Foremost among these is the "fundamental  
10 maxim," recognized "[f]or more than three centuries, ... that the  
11 public ... has the right to every man's evidence." United States  
12 v. Bryan, 339 U.S. 323, 331, 70 S.Ct. 724, 94 L.Ed. 884 (1950).  
13 Thus, a court shall start "with the primary assumption that  
14 there is a general duty to give what testimony one is capable of  
15 giving, and that any exemptions which may exist are distinctly  
16 exceptional, being so many derogations from a positive general  
17 rule." Id., at 323. "Because the privilege 'stands in derogation  
18 of the public's "right to every man's evidence, ... it ought to  
19 be strictly confined within the narrowest limits consistent with  
20 the logic of its principle.'" " In re Grand Jury Subpoenas Dated  
21 January 20, 1998, 995 F.Supp. 332, 337 (1998) (citations  
22 omitted.) It is the party seeking an exception from this  
23 principle that bears the burden of establishing the existence of  
24 a privilege and its applicability to a particular case. See,  
25        ///  
26        ///

1 e.g., United States v. International Bhd. of Teamsters, 119 F.3d  
2 210, 214 (2d Cir.1997).<sup>2</sup>

3 The attorney-client privilege prevents disclosure of a  
4 communication from a client to a lawyer, where that  
5 communication:

6 relates to a fact of which the attorney was informed  
7 (a) by his client (b) without the presence of strangers  
8 (c) for the purpose of securing primarily either (i) an  
opinion on the law or (ii) legal services or (iii)  
assistance in some legal proceeding, and not (d) for  
the purpose of committing a crime or tort; and (4) the  
privilege has been (a) claimed and (b) not waived by  
the client.

10

11 United States v. United Shoe Machinery Corp., 89 F.Supp. 357, 358  
12 (D.Mass.1950); Colton v. United States, 306 F.2d 633, 637 (2d  
13 Cir.1962).

14 There is no statutory definition of the attorney-client  
15 privilege in the Federal Rules of Evidence (FRE). However,  
16 proposed FRE 503 (also referred to as Supreme Court Standard 503)  
17 provides guidance which has been used by courts in defining the  
18 privilege. The most relevant aspect of Standard 503 is its  
19 statement of the general rule:

20 A client has a privilege to refuse to disclose and to  
21 prevent any other person from disclosing confidential  
communications made for the purpose of facilitating the  
rendition of professional legal services to the client,  
22 (1) between himself or his representative and his  
lawyer or his lawyer's representative, or (2) between  
23 his lawyer and his lawyer's representative, or (3) by  
him or his lawyer to a lawyer representing another in a  
matter of common interest, or (4) between

25  
26 <sup>2</sup> Counsel for Sabella acknowledges that she has the burden of establishing that Lei is a  
"client representative" because she is the one asserting the attorney-client privilege. See  
Transcript dated January 29, 2008, at 14:12-17.

1                   representatives of the client or between the client and  
2                   a representative of the client, or (5) between lawyers  
representing the client.

3 Supreme Court Standard 503(b).

4                   Supreme Court Standard 503 does not define "representative."  
5                   However, Uniform Evidence Rule 502(a)(4) also explains that  
6                   communications between an attorney and a client and a client's  
7                   representative can be protected.<sup>3</sup> Uniform Rule of Evidence  
8                   502(a)(4) defines "client representative":

9                   "Representative of the client" means a person having  
10                   authority to obtain professional legal services, or to  
act on legal advice rendered, on behalf of the client  
11                   or a person who, for the purpose of effectuating legal  
representation for the client, makes or receives a  
12                   confidential communication while acting in the scope of  
employment for the client.

13                   The parties to this dispute agree that, as to the law within  
14                   the Ninth Circuit, the case of Memry Corp. v. Ky. Oil Tech., NV.,  
15                   2007 U.S. Dist. LEXIS 3094 (N.D.Cal. 2007), adopting the Eighth  
16                   Circuit decision in In re Bieter Co., 16 F.3d 929, 937 (8<sup>th</sup> Cir.  
17                   1994), best sets forth the inclusion of "client representatives"  
18                   within the attorney-client privilege, at least where the client  
19                   is a corporation.

20                   As stated above, the attorney-client privilege is an  
exception to the general rule that all information is  
22                   discoverable, and is thus to be applied narrowly. It is  
23                   generally destroyed if the client discloses the communications to  
24                   third parties. The "client representative" concept is a limited  
25

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26                   <sup>3</sup> Uniform Evidence Rule 502 has been described as "a clear statement of the scope of  
the privilege as now generally accepted." McCormick on Evidence, (6<sup>th</sup> Ed. 2006).

1 extension of the attorney-client privilege to third parties to  
2 whom communications are disclosed if such disclosure is necessary  
3 for the client to obtain legal services. This extension, in  
4 turn, must also be applied narrowly within the limits of its  
5 purpose.

6 Case law shows the "client-representative" to be applicable  
7 in two distinct situations. The first is where the client is a  
8 corporation and requires communication on its behalf. See e.g.  
9 Memry and Bieter. The second is where an individual is in some  
10 unique position requiring another to intervene between she and  
11 counsel.

12 In Bieter, the court specifically extended the reach of the  
13 test it had adopted in Diversified Indus., Inc. v. Meredith, 572  
14 F.2d 596 (8<sup>th</sup> Cir. 1977), from corporations to partnerships and  
15 other such entities. However, the court drew the line at  
16 individuals:

17 The test we adopted in Diversified, although expressly  
18 applicable to corporations and their employees, is not  
19 less instructive as applied to a partnership, or some  
other client entity (as opposed to an individual), and  
its employees...."

20 Bieter, 16 F.3d at 935.

21 Having considered the evidence produced, the Court  
22 determines that the line of cases which governs this dispute are  
23 those involving an individual. The objection to the Trustee's  
24 subpoenas is made in the name of "Dynamic Finance Corporation and  
25 Angella C. Sabella." However, the Court finds that with respect  
26 to the lending activities in which Lei was involved, it was

1 Sabella the individual that was the lender/client. Though the  
2 Court is aware that Sabella conducts business at times in the  
3 name of Dynamic, it is clearly her individual business and loans  
4 made by her. The testimony at the trial indicated that it was  
5 Sabella who made the decision of whether to loan personally or  
6 through Dynamic. The relationship with Lei began as a personal  
7 relationship between Lei and Sabella's husband. Sabella the  
8 individual extended to Lei the opportunity to make money acting  
9 as loan broker. In the view of the Court, after considering the  
10 evidence, this case is about a personal relationship between  
11 Sabella and Lei implemented to carry out Sabella's lending  
12 business, which sometimes was funded through Dynamic. Thus, the  
13 applicable authority is those cases considering the application  
14 of the "client representative" extension of the attorney-client  
15 privilege to individuals.

16 In the situation of an individual, courts have recognized  
17 the "client representative" extension where the individual client  
18 is somehow disabled and unable to conduct their legal affairs.  
19 "While individuals can speak for themselves, a corporation must  
20 speak through its representatives." Leone v. Fisher, 2006 WL  
21 2982145 at 4 (D.Conn. Oct. 18, 2006). "A private person,  
22 however, generally has no need for a representative to  
23 communicate with an attorney. Only in extraordinary cases ...  
24 has the attorney-client privilege been extended to the designated  
25 representative of an individual client." In re Grand Jury  
26 Subpoenas Dated January 20, 1998, 995 F.Supp. 332, 340 (1998).

1       In the case of an individual, the "client representative"  
2 exception was held to apply to communications between counsel for  
3 a college student involved in a life-threatening accident and his  
4 parents where the client's "injuries and the comprehensive  
5 medical interventions necessary to treat those injuries inhibited  
6 plaintiff from independently seeking legal counsel." See  
7 Hendrick v. Avis Rent a Car Sys., Inc., 944 F.Supp. 187, 189  
8 (W.D.N.Y. 1996).

9       The extension was also applied to a mother's communications  
10 with counsel on behalf of her son who was incarcerated.

11 Gerheiser v. Stephens, 712 So.2d 1252, 1254 (Fla.App. 1998).  
12 Also, communications between the parents of a minor child and the  
13 child's attorney. Grubbs v. K Mart Corp., 411 N.W.2d 477, 480  
14 (Mich.Ct.App. 1987). In each situation, the communication  
15 between counsel and the representative was necessitated by the  
16 client's inability, temporary or otherwise, to seek legal  
17 counsel.

18       In Leone, on the other hand, the court did not extend the  
19 attorney-client privilege to communications between counsel and  
20 the client's husband where there was no evidence that the client  
21 could not have communicated directly with counsel herself.

22 2006 WL 2982145 at 5.

23       In the case at hand, the Court finds no reason to extend the  
24 exception to cover the communications between Lei and counsel for  
25 Sabella. The parties asserting the exception have established no  
26 "disability" which required Lei to communicate with counsel on

1 Sabella's behalf. The evidence reveals that Sabella is an  
2 experienced business woman and that she is fluent in the English  
3 language.

4 As already noted, the evidence adduced at the evidentiary  
5 hearing made clear that the relationship between Sabella and Lei  
6 was a personal one. But assuming, arguendo, that Lei had a  
7 relationship with Dynamic that was not already subsumed in his  
8 relationship with Sabella, the Court finds and concludes that  
9 Dynamic has failed to meet its burden of establishing that Lei  
10 was somehow its "client representative" for purposes of  
11 invocation of the attorney-client privilege. Lei denies he was  
12 an employee of Dynamic or Sabella. He had no equity  
13 participation in any of the projects. His only economic interest  
14 was in payment of his commissions, which were payable by the  
15 borrowers, not by Dynamic or Sabella. In this Court's view, the  
16 relationships of Klohs in In re Bieter Co., supra, and Van  
17 Moorleghem's in Memry Corp. v. Ky. Oil Tech., NV, supra, are  
18 vastly different than Lei's relationship to Dynamic.  
19 Accordingly, if the Court considers Lei's relationship with  
20 Dynamic separately from his relationships with Sabella (which the  
21 facts do not support), the Court finds and concludes Lei's  
22 relationship with Dynamic does not support a finding that he was  
23 acting as a "client representative" for Dynamic for purposes of  
24 shielding his communications with Sabella's (and Dynamic's) same  
25 attorneys under the attorney-client privilege.

26 ///

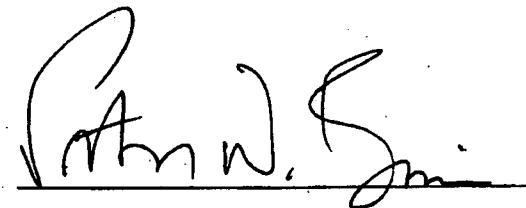
1 CONCLUSION

2 The facts of this case do not warrant an extension of  
3 Sabella's (or Dynamic's) attorney-client privilege to  
4 communications between counsel and Lei. Accordingly, the  
5 Trustee's motion to compel production of those records with  
6 respect to which the privilege was asserted is granted.

7

8 IT IS SO ORDERED.

9 DATE: MAY 30 2008



10  
11 PETER W. BOWIE, Judge  
12 United States Bankruptcy Court  
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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re Case No. 04-00769-B11

**CERTIFICATE OF MAILING**

The undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

ORDER ON TRUSTEE'S MOTION  
TO COMPEL DISCOVERY FROM  
ISAAC LEI/THE ALCON GROUP

was enclosed in a sealed envelope bearing the lawful frank of the Bankruptcy Judges and mailed to each of the parties at their respective address listed below:

Attorney for Chapter 11  
Trustee:

Ali M. M. Mojdehi, Esq.  
Baker & McKenzie LLP  
12544 High Bluff Drive,  
Third Floor  
San Diego, CA 92130-3051

Attorney for Dynamic Finance  
and Angela Isabella:

Michael Gerard Fletcher, Esq.  
Frandzel Robins Bloom &  
Csato, L.C.  
6500 Wilshire Boulevard  
Seventeenth Floor  
Los Angeles, CA 90048-4920

Said envelope(s) containing such document were deposited by me in a regular United States mail box in the City of San Diego, in said district on May 30, 2008.

  
Barbara J. Kelly, Judicial Assistant

**PROOF OF SERVICE**

I, the undersigned, declare and certify as follows:

I am over the age of eighteen years, not a party to the within action and employed in the County of Los Angeles, State of California. I am employed in the office of FRANDZEL ROBINS BLOOM & CSATO, L.C., members of the Bar of the above-entitled Court, and I made the service referred to below at their direction. My business address is 6500 Wilshire Boulevard, Seventeenth Floor, Los Angeles, California 90048-4920.

On June 9, 2008, I served true copy(ies) of the **NOTICE OF APPEAL**, the original(s) of which is(are) affixed hereto, to the party(ies) listed on the attached service list.

**BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such document(s) were placed in envelopes addressed to the person(s) served hereunder for collection and mailing with postage thereon fully prepaid at Los Angeles, California, on that same day following ordinary business practices.

**BY FACSIMILE:** At approximately \_\_\_\_\_, I caused said document(s) to be transmitted by facsimile. The telephone number of the sending facsimile machine was (323) 651-2577. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The document was transmitted by facsimile transmission, and the sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.

**BY E-MAIL:** At approximately \_\_\_\_\_, I caused said document(s) to be transmitted by electronic mail. The name(s) and e-mail addresses of the person(s) served are set forth in the service list. The document was transmitted by electronic transmission and without error.

**BY CM/ECF NOTICE OF ELECTRONIC FILING:** I caused said document(s) to be served by means of this Court's electronic transmission of the Notice of Electronic Filing through the Court's transmission facilities, to the parties and/or counsel who are registered CM/ECF Users set forth in the service list obtained from this Court.

**BY OVERNIGHT DELIVERY:** I deposited such document(s) in a box or other facility regularly maintained by the overnight service carrier, or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier with delivery fees paid or provided for, addressed to the person(s) served hereunder.

I certify under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on June 9, 2008, at Los Angeles, California.

/s/Tiffany Lok  
TIFFANY LOK

1 **SERVICE LIST**

## 2 VIA CM/ECF NOTICE OF ELECTRONIC FILING

- 3 • K. Todd Curry tcurry@nugentweinman.com
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## 19 VIA U.S. MAIL

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 21 Richard Pachulski  
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 24 Los Angeles, CA 90067

25 Tiffany L. Carroll  
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## CIVIL COVER SHEET

FILED

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Angela C. Sabella, Dynamic Finance Corporation

## DEFENDANTS

Richard Kippert

JUN 30 2008

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY DEPUTY

(c) Attorney's (Firm Name, Address, and Telephone Number)

Michael Gerard Fletcher  
6500 Wilshire Boulevard, 17th Floor  
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323-852-1000

Attorneys (If Known)

08 CV 1194 J CAB

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> PTF 1	<input type="checkbox"/> DEF 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF 4	<input type="checkbox"/> DEF 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input checked="" type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 460 Railway Labor Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<b>Habeas Corpus:</b>	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 530 General	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other			<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights			

## X. ORIGIN

(Place an "X" in One Box Only)

 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 158

Brief description of cause:

VI. CAUSE OF ACTION  
COMPLAINT: CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  NoVIII. RELATED CASE(S)  
IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

6/30/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

**UNITED STATES DISTRICT COURT**

Southern District Of California  
Office Of The Clerk  
880 Front Street, Room 4290  
San Diego, California 92101-8900  
Phone: (619) 557-5600  
Fax: (619) 702-9900

W. Samuel Hamrick, Jr. Clerk of Court

July 11, 2008

Michael Gerard Fletcher  
Frandzel Robins Bloom and Csato  
6500 Wilshire Boulevard 17<sup>th</sup> Floor  
Los Angeles CA

Ali MM Mojdehi  
Baker and Mackenzie  
12544 High Bluff Drive  
San Diego CA 92130

RE: Dynamic Finance Corporation v Sabella  
Bankruptcy Case Number: 04-00769-PB11  
BAP Case Number:

You are hereby notified that the above entitled case was on 7/7/08 transferred from the U S Bankruptcy, Souther District of CA to the U.S. District Court, Southern District of California. The case will now contain the case number of the Southern District, and the initial of the assigned Judge. The case has been assigned to the Honorable Napoleon A Jones Jr, and on all future filings please show the case number as 08cv1194-J (CAB).

Sincerely yours,

W. Samuel Hamrick, Jr.  
Clerk of Court

By: /s M. Marner  
Deputy Clerk

cc: Bankruptcy Court